

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3439 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VRUNDAVAN EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/10/96

ORAL JUDGMENT

Having heard the learned counsel for the petitioner and perused the Special Civil Application, I do not find any case in favour of the petitioner on merits. The petitioner, a Trust, has challenged by this Special Civil Application, the action of the respondent No.1 refusing to grant permission to start secondary school.

2. The petitioner made an application in this respect on 20th October 1985 before the respondent No.1 to start one class of Standard 8th with effect from June 1986 at village Divasa, Taluka Mangrol, District Junagadh in response to the advertisement issued by the Secretary, Gujarat Secondary Education Board, Gandhinagar. The respondent No.4 has also applied in response to the aforesaid advertisement subsequent to the petitioner's application. Under the order dated 5th April 1986, the respondent No.1 has granted permission to start school to respondent No.4 and the application of the petitioner was rejected.

3. From the reply filed by respondent No.4, it appears that it has given admission to the students and made appointment of teachers also. This Court has not granted interim relief in favour of the petitioner. From the order of this Court made on 7.8.86, it comes out that the petitioner has filed appeal against the order of respondent No.1 before respondent No.2. This Court has directed the respondent No.2 to dispose of the appeal within a period of four weeks. The learned counsel for the petitioner is unable to say what ultimately has been decided by the appellate authority. The petitioner has filed appeal against the impugned order and that order was appealable. The petitioner when availed of the remedy of appeal, this writ petition is not maintainable. In the Special Civil Application the petitioner has not disclosed the fact that it has filed appeal against the impugned order. When the petitioner has already availed of the right of appeal, then this writ petition is not maintainable. If any reference is required in this respect, then a reference may have to the decision of Apex Court in the case of B.M.R.D.A. Bombay vs. Gokak Patel Volkart Ltd, reported in JT 1995 (1) SC 155

4. By this time, the appeal would have been disposed of by respondent No.2. The petitioner has not produced any material on record in this respect. The order impugned to this Special Civil Application would have merged in the order passed by the appellate authority and as such this writ petition, otherwise also, is not maintainable. Either the appeal would have been decided in favour of the petitioner or it would have been rejected. In either case, this Special Civil Application is not maintainable because on acceptance of appeal, no grievance survives and on rejection, the impugned order merged in the order of the appellate authority, which is not challenged before this Court. Without challenging the order of appellate authority, this writ petition is not maintainable.

5. In the result, this Special Civil Application fails and the same is dismissed. However, these matters are not res-judicata. The petitioner still has a right in accordance with the rules to move an application for grant of registration of school for running standard 8 and the authority has to consider said application if any is submitted in accordance with law for which no direction is required to be given. Rule discharged. No order as to costs.

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(sunil)